

OLC #78-3122/3

20 NOV 1978

DIA

MEMORANDUM FOR: Deputy Director for Administration

VIA: Director of Logistics

FROM:
Chief, Real Estate and Construction
Division, OL

SUBJECT: Proposed DIA/CIA Collocation

REFERENCES: (a) MFR dtd 9 Nov 78 fm DCI, Subject:
Conversation with Deputy Secretary
of Defense Duncan, 8 November 1978
(paragraph 6)

(b) Memo dtd 17 Nov 78 to A-DDA fm
C/RECD/OL, Subject: Proposed DIA/CIA
Collocation

1. The DCI, in Reference (a), requested more detailed information on the subject of the "clearances" needed before construction of a DIA building on the Langley compound could commence. This subject can be roughly divided into two categories: legislative and executive. By prior agreement, OLC has offered to provide a separate paper to the DCI containing more specific information on the legislative aspects of this problem. An initial OL opinion is, however, that a host of Congressional committees would become involved in this particular situation, including those responsible for appropriations, defense, intelligence, and, most probably, public works.

2. By way of background to a discussion of executive level coordination required, several comments should be made concerning the preliminary Master Plan for the Langley site and on the National Environmental Protection Act. Our preliminary Master Plan was approved by the National Capital Planning Commission (NCPD) in 1972. Our current plan limits the gross square footage for any given structure to a maximum of gross square feet (considerably less than that

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needed to accommodate the DIA complement envisioned in Reference (b)) and limits total employee growth to no more than [redacted]. Moreover, the 1972 plan was adopted by NCPC in executive session at the request of the Agency. Thus, it has never been circulated outside NCPC for comment by federal, state, or local authorities who must, in the final analysis, give their blessing to any construction on the compound. The combination of these factors leads to the conclusion that the existing preliminary Master Plan of 1972 may have to be discarded and a new Master Plan required unless either the DCI's influence or other appropriate executive level pressure is applied. Another situation which will have an impact on the clearance process is the National Environmental Protection Act (NEPA) of 1969. In May 1977, President Carter amended the existing Executive Order on this subject and directed the Council on Environmental Quality (CEQ) to issue legally binding regulations implementing NEPA's procedural provisions. Under existing law, an Environmental Impact Statement (EIS) is required for any federal action which is determined to have a "significant" impact upon environmental quality. The Agency has yet to file an EIS for any project, and discreet inquiries at CEQ indicate some chance, however minimal in this particular case, of getting by with merely an Environmental Assessment - a much less complicated procedure wherein negative environmental impact is determined by the sponsoring agency. An EIS runs to 150 pages, requires the use of outside consultants to complete, must be filed with the Environmental Protection Agency (EPA), and involves public hearings. Recent dealings with local authorities on such minor projects as installation of the incinerator reinforces our belief that, barring direct DCI influence or intervention, it may be necessary to file an EIS to preclude subsequent litigation in approving construction of the magnitude intended. In sum, although there is some hope that filing of an EIS could be avoided, the risk of adversary action is so great that we recommend filing an EIS in order to protect our flanks and forestall inordinate delays once the project is underway.

3. With the foregoing background in mind, the following steps could be required:

a. Prepare and submit to NCPC a new Master Plan for the Langley compound.

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b. Prepare and submit to NCPC a preliminary site and building plan for the proposed building.

c. Contract for, file with EPA, and circulate for comment, an EIS.

Steps a and b would be separated by some 60-90 days to allow time for NCPC to obtain approval of the Master Plan. Step c would run concurrently so that all obstacles could be overcome and the necessary approvals, or clearances, obtained more or less simultaneously. NCPC will act as a clearinghouse for steps a and b by circulating the plan and proposal, conducting hearings, summarizing findings, and, finally, voting to approve the plan and project. In this clearinghouse role, NCPC will coordinate with the following agencies:

Health, Education and Welfare (HEW) - employment opportunities for handicapped, minorities

Housing and Urban Development (HUD) - availability of low-cost housing

Metropolitan Washington Transportation Authority (MWTA) - traffic density on access roads

Fine Arts Commission (FAC) - conformance with Potomac River skyline (and an influential factor in aesthetics of all Metropolitan Washington Area (MWA) construction)

Local Government - Fairfax County Planning Commission, Northern Virginia Regional Planning Commission, the State Clearinghouse (Richmond, VA), and the Metropolitan Washington Council of Governments (COG) - sewage treatment, highway congestion, access roads, drainage, effluents, ad infinitum.

While the Agency would have to defend its proposals and be prepared to compromise if necessary, at least in this portion of the process, NCPC would act as the agent and carry the bulk of the administrative load. The EIS submission presents a different problem because the Agency must accomplish everything itself--prepare or have prepared the EIS, file with EPA, circulate for comments, and hold public hearings if necessary to determine measures to minimize any significant impact of the proposed construction upon the environment. Assuming that no major obstacles are encountered, NCPC/EPA approval would normally be completed within 18 months from the time the Master Plan and EIS are prepared and submitted for comment/approval.

4. The information provided above on clearance procedures is responsive to the DCI's specific request, but there are also potential problems in the funding and implementation of a project of this magnitude with which the DCI should be familiar. Described below are several different approaches to funding and implementation and a brief description of the problems associated with each.

a. The first and perhaps most expedient at this point in time would be to get OMB and Congressional approval to utilize the construction funds currently included in the FY-80 Military Construction appropriation for construction at Langley rather than Bolling and to use the Navy (DIA's construction agent) and their Architect-Engineer to accomplish the project at Langley. GSA can be expected to object to this approach since the original construction at Headquarters and all subsequent maintenance, operation, and new construction has been effected by them. On the other hand, they have done so at the invitation of the Agency because money for the original construction and most subsequent construction was appropriated directly to the Agency, not GSA. This may well become a legal/jurisdictional issue which would have to be resolved by the Office of the General Counsel (OGC).

b. A second and less desirable approach would be to have the Agency seek specific legislation approving and funding Langley construction and accomplish the work by direct contract between the Agency and a "turn-key contractor" who would perform both design and construction. Obviously, the legislative process is lengthy and requires considerable coordination. Moreover, direct contracting by the Agency, particularly if it was to be accomplished on a sole-source, negotiated basis to minimize delay, would require the DCI to utilize his extraordinary operational authorities as contained in the CIA Act of 1949. This approach would require investigation by OGC and, if not authorized, then a direct contract could only be written with a specific delegation from the Administrator of GSA, an unlikely event considering their role as major "construction agency". It should also be noted that this approach would require the full-time services of an additional number of Agency personnel to manage the project.

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c. The only other alternative, the GSA/prospectus route, is considered unacceptable because it so obviously exceeds the time frame already established.

5. The additional information provided above is intended simply to introduce all the possible issues which must be resolved before construction could proceed at Langley. Should the DCI desire a more definitive discussion of these alternative courses of action, it is recommended that a group comprising OLC, OGC, Comptroller, and OL facilities representatives be tasked to develop same.

6. Please let me know the DCI's desires in this matter.

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cc: OLC ✓
OGC
O/Compt

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